

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAHMAN JOHNSON,

Defendant.

CASE NO. CR12-0375-JCC

CR12-0237-JCC-008

ORDER GRANTING MOTION TO  
REDUCE SENTENCE

This matter comes before the Court on Defendant Rahman Johnson's motion to reduce his sentence (Dkt. No. 39) and the Government's response (Dkt. No. 42). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the motion for the reasons explained herein.

**I. BACKGROUND**

On August 28, 2012, Mr. Johnson was arrested under suspicion of conspiracy to distribute controlled substances. He was released on pretrial supervision on September 5, 2012. While on pretrial release, he committed his second offense, felon in possession of a firearm. He was arrested on December 4, 2012 and charged separately for that offense. On March 6, 2013, Mr. Johnson pled guilty to both the conspiracy and possession charges. At sentencing, this Court found the advisory range under the Sentencing Guidelines to be 51-63 months for both offenses. (Dkt. No. 35 at 18.) However, the Court exercised its discretion pursuant to 18 U.S.C. § 3553

1 and imposed a *Booker* variance, sentencing Mr. Johnson to 24 months for the drug offense  
2 (CR12-0237-JCC-008) and 72 months for the firearm offense (CR12-0375-JCC) to run  
3 consecutively for a total of 96 months. (Dkt. No. 35 at 18–19.)

4 The United States Sentencing Commission (“Commission”) identified Mr. Johnson as a  
5 defendant who is eligible for a reduction of his sentence under Amendment 782 to the United  
6 States Sentencing Guidelines (“USSG”) Drug-Quantity Table. The Commission recently  
7 amended the Drug Quantity Table in USSG § 2D1.1, reducing a defendant’s offense level by two  
8 for most drug offenses. USSG Amendment 782. Under the new guideline, Mr. Johnson’s  
9 combined offense level would be reduced from 18 to 17, which would carry an advisory range of  
10 46 to 57 months. (Dkt. No. 39 at 3.) Mr. Johnson now brings this motion, requesting a 12 month  
11 reduction in his sentence. (*Id.* at 2.)

## 12 **II. DISCUSSION**

13 Courts are to observe a two-step approach in considering sentence reductions in light of  
14 an amendment to the sentencing guidelines: (1) the court must determine that a reduction is  
15 consistent with the policy statements issued by the United States Sentencing Commission,<sup>1</sup> and  
16 (2) the court shall consider whether the reduction authorized by any guideline amendment is  
17 warranted in light of the sentencing factors set forth in 18 U.S.C. § 3553(a). *See Dillon v. U.S.*,  
18 560 U.S. 817, 827 (2010).

### 19 **A. Applicability of Amendment 782**

20 Under Amendment 782, a defendant is eligible for a sentencing reduction where  
21 Amendment 782 applies and where he or she did not already receive a sentence equal to or less  
22 than the bottom of the guideline range established by the application of the amendment. *See* 18  
23 U.S.C. § 3582(c)(2); U.S. SENTENCING GUIDELINES MANUAL (“USSG”) § 1B1.10(a)(3),  
24 (b)(2)(A). A sentence reduction under this process does not constitute a full resentencing; a court  
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26 <sup>1</sup> The policy statement at issue is contained in the United States Sentencing Manual at § 1B1.10.

1 may not reconsider other sentencing determinations not altered by the guideline amendment.  
2 USSG § 1B1.10(a)(3) (2014). Amendment 782 applies to conspiracy convictions like Mr.  
3 Johnson's. *See* USSG § 2D1.1 (§ 2D1.1 of the USSG includes drug offenses involving attempt or  
4 conspiracy); *U.S. v. Cano*, 2015 WL 1983152 at \*1–2 (E.D. Cal. May 1, 2015) (applying  
5 analysis and reduced sentencing range to a conspiracy conviction, though the defendant's motion  
6 was ultimately denied).

7 **B. Mr. Johnson's Eligibility for Reduction**

8 18 U.S.C. § 3582(c)(2) authorizes district courts to modify an imposed sentence "in the  
9 case of a defendant who has been sentenced to a term of imprisonment based on a sentencing  
10 range that has subsequently been lowered by the Sentencing Commission . . . if such reduction is  
11 consistent with applicable policy statements issued by the Sentencing Commission." *See United*  
12 *States v. Dunn*, 728 F.3d 1151, 1155 (9th Cir. 2013). USSG § 1B1.10(a), the pertinent policy  
13 statement, provides that where "a defendant is serving a term of imprisonment, and the guideline  
14 range applicable to that defendant has subsequently been lowered . . . the court may reduce the  
15 defendant's term of imprisonment . . ." *See also Cano*, 2015 WL 1983152 at \*1.

16 Courts generally cannot reduce a defendant's term of imprisonment to anything less than  
17 the minimum of the of the new guideline range established by an amendment. USSG  
18 § 1B1.10(b)(2)(A); *Dillon*, 560 U.S. at 827. An exception to this rule exists, "if the sentencing  
19 court originally imposed a term of imprisonment below the Guidelines range . . . § 1B1.10  
20 authorize[s] a court proceeding under § 3582(c)(2) to impose a term 'comparably' below the  
21 amended range." *Id.* (citing USSG § 1B1.10(b)(2)(B)). However, this exception only applies  
22 where the government moved for a reduction in offender score based on "substantial assistance"  
23 at the time of original sentencing. *See* USSG § 1B1.10(b)(2)(B). If Mr. Johnson's original  
24 reduced sentence was not based on substantial assistance to the government, and is still lower  
25 than the revised sentence under the retroactive amendment, this Court is without jurisdiction to  
26 lower it further.

1 Mr. Johnson's case is somewhat unique in that he had two cases that were sentenced on  
2 the same date. Accordingly, the Court addresses both cases in determining whether Mr. Johnson  
3 is eligible for a reduction.

4 1. Mr. Johnson's Drug Conspiracy Sentence

5 Based on a criminal history category of V, and a total offense level of 17, the guideline  
6 range for Mr. Johnson's drug conspiracy conviction was 46 to 57 months. (Dkt. No. 35 at 18.)  
7 The guideline range for both offenses was 51 to 63 months. (*Id.*) The Court sentenced Mr.  
8 Johnson to 24 months for his drug conspiracy conviction. (*Id.*) The downward departure from the  
9 advised range was not based on "substantial assistance" to the government.

10 Under Amendment 782, the new guideline range for both offenses is 46 to 57 months.  
11 (Dkt. No. 39 at 3; Dkt. No 42 at 11.) Were this Court to consider the drug charge separately, the  
12 total offense level would be 15. (Dkt. No. 42 at 12, n.5.) With a criminal history category of V,  
13 the advisory range would be 37 to 46 months. (*Id.*) In either case, Mr. Johnson's original  
14 sentence is still lower than the minimum of the new guideline range established by the  
15 amendment. Because the original downward departure was not based on "substantial assistance"  
16 to the government, the Court's hands are tied; any considerations that warranted sentencing Mr.  
17 Johnson below the original guideline range do not authorize the Court to make a comparable  
18 reduction under a new guideline range. As his original sentence is already lower than the  
19 maximum reduction to which he would be entitled, the Court lacks jurisdiction to reduce Mr.  
20 Johnson's sentence.

21 2. Mr. Johnson's Felon in Possession Charge

22 For Mr. Johnson's felon in possession conviction, a criminal history category of V and a  
23 total offense level of 12, the guideline range was 24 to 30 months. (Dkt. No. 35 at 18.) The  
24 guideline range for both offenses was 51 to 63 months. (*Id.*) The Court imposed a 72 month  
25 sentence for the gun charge, to run consecutively to the 24 months for the drug charge. (*Id.* at  
26 18–19.) As a result of Amendment 782, Mr. Johnson's combined applicable sentencing range has

1 been reduced. Mr. Johnson's original sentence of 72 months is above the minimum of the revised  
 2 advisory range, 46 to 57 months. (Dkt. No. 42 at 12–13.) The Government agrees that the Court  
 3 has the authority to reduce the firearm offense.<sup>2</sup> Mr. Johnson is technically eligible for a  
 4 reduction to 46 months, however given the Court's position at sentencing, he recognizes that  
 5 such a reduction would be unreasonable, and requests a reduction of 12 months, resulting in an  
 6 84 month sentence. The Court therefore proceeds to determine whether a reduction is warranted  
 7 in light of the 18 U.S.C. § 3553(a) factors.

8 **C. 18 U.S.C. § 3553(a) Factors as Applied to Mr. Johnson**

9 Even though Mr. Johnson is eligible for a reduction in sentence, the Court has discretion  
 10 to deny a reduction after consideration of the applicable 18 U.S.C. § 3553(a) sentencing factors.  
 11 *Dillon*, 560 U.S. at 826; USSG § 1B1.10, App. Note 1(B). Because the Court cannot generally  
 12 disrupt earlier guideline application decisions, it considers only those § 3553(a) factors that have  
 13 changed since initial sentencing. Earlier considerations will stand regarding “the nature and  
 14 circumstances of the offense,” § 3553(a)(1), and “the need for the sentence imposed—to reflect  
 15 the seriousness of the offense, promote respect for the law, and to provide just punishment for  
 16 the offense,” § 3553(a)(2)(A). The Court already recognized the severity of the crime in its  
 17 original offense level calculations.

18 The present inquiry pertains to those factors that have changed since Mr. Johnson's initial  
 19 sentencing. Specifically relevant to Mr. Johnson are “the history and characteristics of the  
 20 defendant,” § 3553(a)(1), the need “to protect the public from further crimes of the defendant,”  
 21 § 3553(a)(2)(C), and the need to “provide the defendant with needed educational or vocational  
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23  
 24 <sup>2</sup> Defendant initially argued that this Court could revisit its decision to impose  
 25 consecutive sentences and, as one avenue of relief, change Mr. Johnson's sentences to run  
 26 concurrently. However, because the Government concedes that Mr. Johnson is eligible for a  
 reduction to his firearm charge, the Court need not consider this argument. Furthermore, the  
 Ninth Circuit arguably foreclosed this argument in *United States v. Aguilar-Canche*, \_\_ F.3d \_\_,  
 2016 WL 4501687, at \*4 (9th Cir. Aug. 29, 2016).

1 training, medical care, or other correctional treatment in the most effective manner,”  
2 § 3553(a)(2)(D). Congress mandates that “[n]o limitation shall be placed on the information” that  
3 the Court may consider “concerning the background, character, and conduct of a person  
4 convicted of an offense.” 18 U.S.C. § 3661.; *see* Guidelines 1B1.4 (2010). Ultimately, the Court  
5 “shall impose a sentence sufficient, but not greater than necessary” to satisfy the § 3553 factors.  
6 18 U.S.C. § 3553(a).

7 In examining the history and characteristics of the defendant, a court may consider the  
8 defendant’s “post-sentencing conduct” pursuant to the Sentencing Guideline 1B1.10 n.1(B)(iii).  
9 *See Pepper v. United States*, 562 U.S. 476, 492 (2011) (it is the “court’s duty” to sentence  
10 defendant “as he stands before the court on the day of sentencing.”) (quoting *United States v.*  
11 *Bryson*, 229 F.3d 425, 426 (2d Cir. 2000)). Accordingly, the Court now considers Mr. Johnson as  
12 he stands today.

13 The Court recognizes the steps Mr. Johnson has taken to rehabilitate himself. Since being  
14 incarcerated, he has earned his G.E.D., and in 2015 alone, has taken 30 classes in prison  
15 including classes on parenting, financial responsibility, anger and behavioral management,  
16 positive thinking, drug addiction and rehabilitation, and personal growth. (Dkt. No. 39-3–4.) He  
17 appears to have made every effort during his incarceration to prepare for a successful reentry into  
18 society as a productive member of his community and as a better father to his son. (Dkt. No. 39-  
19 4.) He has the support of his family. (*Id.*) Even the mother of his child—who was involved in the  
20 ambush and drive by shooting which led to Mr. Johnson’s arrest for felon in possession of a  
21 firearm—supports an earlier release date for Mr. Johnson, explaining the struggles their son is  
22 experiencing in Mr. Johnson’s absence. (*Id.*)

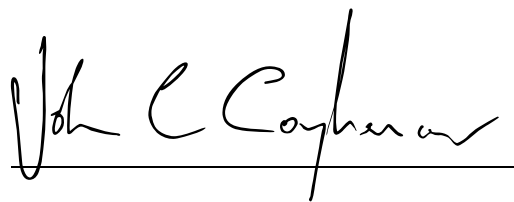
23 As for the need “to protect the public from further crimes of the defendant,”  
24 § 3553(a)(2)(C), and to “provide the defendant with needed educational or vocational training,  
25 medical care, or other correctional treatment in the most effective manner,” § 3553(a)(2)(D), the  
26 above discussion is relevant. Mr. Johnson does have a significant criminal history, however

1 through his post-sentence actions, he has demonstrated a commitment to change. With this in  
2 mind, the likelihood of him reoffending is greatly reduced, and the protection afforded the public  
3 by keeping him incarcerated for the 12 months in question is minimal. Further, given that he is  
4 already taking full advantage of the educational and correctional programs available to him, an  
5 extra 12 months is not necessary in order to provide more training. Mr. Johnson has shown a  
6 serious commitment to bettering his life, both presently and upon his eventual release. While the  
7 Court in no way minimizes the seriousness of Mr. Johnson's conduct that lead to his  
8 incarceration, his rehabilitative efforts post-sentencing counsel in favor of a reduction in his  
9 sentence. Based on an initial sentence of 96 months, and a new advisory range of 46 to 57  
10 months, the Court finds Mr. Johnson's request for a 12 month reduction reasonable.

### 11 **III. CONCLUSION**

12 For the foregoing reasons, the Court GRANTS Mr. Johnson's motion for a reduced  
13 sentence (Dkt. No. 39). The Court hereby ORDERS that, based on Amendment 782, Mr.  
14 Johnson's sentence is reduced by 12 months, to a total of 84 months. This order does not affect  
15 the length of time of his supervised release.

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17 DATED this 18th day of October 2016.

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John C. Coughenour  
UNITED STATES DISTRICT JUDGE